

KELLER ROHRBACK L.L.P.

LYNN LINCOLN SARKO
MANAGING PARTNER

January 8, 2016

Honorable Charles R. Breyer
United States District Court, N.D. California
450 Golden Gate Avenue
San Francisco, CA 94102

VIA ECF

Re: *In re Volkswagen "Clean Diesel" Marketing, Sales Practices and Products
Liability Litigation*, 15-MD-2672 CRB (JSC); Leadership Application

Dear Judge Breyer:

I respectfully request appointment as Lead Counsel or to the Steering Committee in this Action. I seek to represent all consumers, both owners and lessees.

I am the Managing Partner of Keller Rohrbach L.L.P., a 70-lawyer firm with a proven track record of working effectively with other counsel, government agencies, and defense advocates to achieve outstanding results. I am a former Assistant U.S. Attorney who also holds an M.B.A. Early in my career, I worked at Arnold & Porter LLP. For nearly 30 years I have prosecuted class action and fraud cases, including MDLs, against a broad range of businesses—such as car companies and automobile parts manufacturers, energy and oil companies, and national banks. From my diverse experience, I have found that the best results require collaboration and diplomacy. My firm has a long history of successfully pursuing consumer and environmental cases in which we have won significant redress for the economic, social, and environmental injuries caused by fraud and corporate misconduct.

I would be honored to help lead this significant litigation. I am fully prepared to devote the time and substantial financial resources necessary to do so.

1. Relevant professional experience in major fraud and environmental cases. Among the cases listed in the attached resume (*see* Att. A) is my trial work on behalf of injured plaintiffs in the Exxon Valdez oil spill. I was on the trial team that achieved an extraordinary outcome for the fishermen, Native Alaskans, and mandatory punitive damages class affected by this massive environmental disaster. After trial, Judge Holland appointed me as the Settlement Administrator to allocate and deliver over \$1 billion in class recoveries through the Exxon Qualified Settlement Funds. My extensive roles in *Exxon* provide invaluable experience here. *Exxon* included a mix of direct action and class claimants, and its settlement funds arrived in waves from different sources, with different allocation factors based on each claimant's relationship to the tort. Similarly, here the loss allocation and claims program may need to accommodate a variety of factors, including the perspectives of full and financed owners, lessees, dealers, and impacts of the proposed "fix" on different car makes and models.

I also served as co-lead counsel in the *Enron* ERISA litigation. A highlight of *Enron* was our significant development of the case law to benefit thousands of defrauded employees who lost their retirement savings when Enron collapsed. Keller Rohrbach negotiated five separate settlements and recovered hundreds of millions of dollars for employees and retirees. Early in the case, Enron sought bankruptcy court protection; yet, with our firm's bankruptcy and restructuring expertise, we were able to achieve favorable resolution in both the bankruptcy and federal district courts. Our work in *Enron* paved the way for a number of other cases in which we

have been able to recover over a billion dollars for employees and retirees, including the hard-fought *WorldCom* ERISA case.

My firm takes on cases that make a tangible difference in our communities. We are co-lead counsel for individuals and businesses harmed by the 2015 oil spill at Refugio State Beach that sullied natural resources and beaches in Southern California. We seek both damages and environmental restoration in that case. We also represent an Illinois municipality whose riverfront has been defiled by a long-abandoned paper mill. As a result of our advocacy, the owner is now remediating that property to the benefit of the community.

Keller Rohrbach has also served as chair of the plaintiffs' executive committee in the lead toy litigation against Mattel. The settlement of that case attained consumer refunds, implemented lead testing, and ensured the safety of Mattel toys. We took a similar approach in litigation on behalf of consumers of baby bottles containing the alleged toxin Bisphenol A (BPA). We were willing to pursue this challenging case because of the product's real-world impacts on our most vulnerable. We are a go-to firm for consumers and victims of environmental contamination who need a voice.

2. Judicial and Mediator References:

- The Hon. Denise L. Cote, S.D.N.Y. (212-805-0202). Referring to my role as Lead Counsel in *WorldCom* ERISA, Judge Cote stated, "Lead Counsel has performed an important public service in this action and has done so efficiently and with integrity... [Keller Rohrbach] has also worked creatively and diligently to obtain a settlement from WorldCom in the context of complex and difficult legal questions." *In re WorldCom, Inc. ERISA Litig.*, No. 02-4816, 2004 WL 2338151 at *10 (S.D.N.Y. Oct. 18, 2004).
- The Hon. Melinda Harmon, S.D. Tex. (713-250-5518). Judge Harmon oversaw my work as Co-Lead Counsel in the *Enron* ERISA litigation.
- The Hon. H. Russel Holland, D. Alaska (907-677-6252). Judge Holland oversaw my work in *Exxon Valdez* and appointed me to serve as the Settlement Administrator.
- The Hon. Gerald E. Rosen, E.D. Mich. (313-234-5135). Judge Rosen is familiar with my work in this Action prior to its transfer to this Court, my work as Lead ERISA Counsel on behalf of Delphi employees, and recent litigation advocating for fair wages for Detroit nurses in an antitrust action against a number of defendants.
- **Mediators:** The Hon. Layn R. Phillips (Ret.), Phillips ADR, 949-760-5296; The Hon. Daniel Weinstein (Ret.), JAMS, 415-982-5267; The Hon. Edward A. Infante (Ret.), JAMS, 415-982-5267; and Eric D. Green, Resolutions, LLC, 617-556-0800.

3-7. Willingness to immediately commit time and resources and work cooperatively.

As soon as the first news of this fraud broke, I mobilized a diverse team of lawyers and professionals who have been fully engaged protecting the interests of the class and keeping class members informed. See <http://krcomplexlit.com>. We filed the first multi-plaintiff action in the nation on September 20, 2015, and were one of the first to assert RICO allegations on October 1, 2015. My team has worked with co-counsel and defense counsel to craft an early preservation order and to ensure that Volkswagen's "goodwill" program did not interfere with the class's claims. We have been communicating with both state and federal regulators and the U.S.

Department of Justice about these matters. In shaping our complaints, we have consulted with leading experts in the environmental and engineering fields. We have been hired by over 100 clients who seek to represent a class across the U.S. Our clients have retained us because of our consumer and environmental experience and our shared commitment to holding defendants accountable for their financial and environmental harms. We have the capacity, talent, and enthusiasm to vigorously pursue this Action.

Our legal team includes attorneys with prior specialized experience working for the U.S. Department of Justice and in environmental law. We have German-speaking attorneys and an in-house electronic discovery team—resources which will minimize costs and maximize efficiency in keeping with Fed. R. Civ. P. 1. We are prepared to advance substantial costs and devote thousands of hours of attorney and professional time to this case. If I am selected to serve as lead counsel or on the steering committee representing consumers, I will work cooperatively with the leadership team as well as defense counsel. We have the support of numerous firms in making this leadership application. (*See* Att. B.) We have no financial agreements with any firm or counsel.


8. Other factors that qualify me for a leadership position. This Action has the hallmarks of a typical “fraud” case, but it is not a garden-variety “car” case. By admitting the illegal use of defeat devices, Volkswagen has conceded elements of liability and has publicly stated its interest in expeditious resolution. Thus, a significant focus for the leadership from the start will be settlement discussions. The class does not want to continue driving “dirty” cars, and Volkswagen wants to make amends and restore its customers’ and dealers’ confidence. At the same time, litigation will be intensely active, with a number of motions and disputes. This dynamic plays to my strengths.

First, I believe that building consensus and trust on both sides of the caption is essential to successful litigation. The results I have achieved in complex cases, my judicial and mediator references, and the list of plaintiff firms who support this leadership application validate my approach. Designing and implementing a resolution to the complex set of problems presented by this case will be a challenging task requiring delicate balancing, significant areas of disagreement, and, no doubt, some trade-offs. Respectively, I have the skill set, experience, and talents to guide and partner with other eminent plaintiffs’ firms to achieve this result.

Second, bankruptcy, corporate restructuring, and the threat of defendants’ ability-to-pay loom on the horizon and will likely be raised by defendants, even if Volkswagen is ultimately able to weather this storm financially. I have significant bankruptcy and financial restructuring experience, including in class action cases such as *Enron*, *World Com*, and *Global Crossing*—and my team and I know how to secure meaningful class recoveries in the face of bankruptcy threats.

I appreciate the opportunity to submit this application for a leadership position.

Respectfully,



Lynn Lincoln Sarko

Attachments